EXPLANATORY MEMORANDUM

THE SOCIAL SECURITY REVALUATION OF EARNINGS FACTORS ORDER (NORTHERN IRELAND) 2017

S.R. 2017 No. 53

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department for Communities ("the Department") to accompany the above Statutory Rule which is laid before the Northern Ireland Assembly.

1.2 The Statutory Rule is made under sections 130 and 165(1), (4) and (5) of the Social Security Administration (Northern Ireland) Act 1992 and is subject to the negative resolution procedure.

2. Purpose

2.1 The Social Security Revaluation of Earnings Factors Order (Northern Ireland) 2017 provides that the earnings factors relevant to the calculation of inherited Additional State Pension and the corresponding Guaranteed Minimum Pensions of formerly contracted-out occupational pension schemes are to be increased for the tax years since 1978/79 by a specified percentage. This ensures that they maintain their value in relation to the general level of earnings. The percentage is also used for revaluing state scheme pension credits and debits which are used for the purposes of pension sharing on divorce etc. The Order comes into operation on 6th April 2017.

3. Background

3.1 Under section 148 of the Social Security Administration Act 1992, the Secretary of State is required, in each tax year, to review the general level of earnings in Great Britain. If there is an increase during the review period, he is required to make an order to increase the earnings factors for past years used in the calculation of additional State Pension (which includes both the State Earnings-Related Pension Scheme (SERPS) and State Second Pension (S2P)) and Guaranteed Minimum Pensions (GMPs) so that they maintain their value relative to earnings growth.

3.2 Section 130 of the Social Security Administration (Northern Ireland) Act 1992 ("the 1992 Act") provides that where the Secretary of State makes such an Order the Department may make a corresponding Order for Northern Ireland. The Department has no power to set different percentages.

Additional State Pension

3.3 For the purposes of additional pension, ‘earnings factors’ essentially represent the amount of earnings on which relevant National Insurance contributions have been paid or treated as paid over a person’s working life from 1978/79 onwards. They are derived from earnings upon which primary Class 1 contributions have been paid or treated as paid, and from Class 2 and Class 3 contributions paid. For years from 2002/03 to 2015/16 (the last year of additional State Pension accrual) additional pension accrued on primary Class 1 contributions only. Carers and disabled people entitled to certain benefits are treated as having an earnings factor for these purposes.

3.4 The earnings factors derived for each year from 1978/79 (when the additional State Pension was introduced) to 2015/16 are revalued annually in line with the movement in average earnings. This annual revaluation exercise allows earnings factors derived from historic earnings to be restated at current values as part of the calculation of an award of additional State Pension under both SERPS and S2P. Once in payment, additional State Pension is up-rated annually in line with the general increase in the level of prices.

3.5 Since 6 April 2016, the Revaluation Order also provides the percentage used to revalue flat-rate amounts of S2P accrued in tax years 2012/13 to 2015/16 (formerly revalued by way of a separate Order (the Social Security Pensions (Flat Rate Accrual Amount) Order). The last such Order reset the flat-rate amount at £93.60 for 2015/16. From 6 April 2016, flat-rate amounts will be increased by the percentage specified for 2015/16 in the Schedule to the Revaluation Order.

3.6 On 6 April 2016, the old two-tier State Pension of basic and additional State Pension was replaced by a new State Pension for people reaching State Pension age on or after that date. The new State Pension is based on a flat-rate amount (1/35th of the full rate of new State Pension) for each qualifying year of paid or credited National Insurance contributions from 6 April 2016 onwards, up to a maximum of 35. This means that there are no further accruals of additional State Pension after 5 April 2016. Except in the case of deferred pensions, the only new awards of additional State Pension possible after that date are of inheritable additional State Pension payable either as part of an old State Pension to a surviving spouse or civil partner who had reached State Pension age before 6 April 2016, or as part of Widowed Parent’s Allowance to a surviving spouse or civil partner widowed under State Pension age.

3.7 Where the deceased spouse or civil partner had reached, or would have reached, State Pension age under the new State Pension rules, the survivor’s inherited additional State Pension will be calculated from the deceased’s earnings factors and flat-rate accrual amounts of S2P up to and including 2015/16, revalued to the tax year immediately before the tax year in which they died or, if later, reached State Pension age. This is to ensure that earnings growth beyond 6 April 2016 is reflected in the survivor's pension, as it would have been had the new State Pension not been introduced.

Shared Additional Pension

3.8 Where a pension sharing order has been made by the Courts in respect of a person's additional State pension, this creates a state scheme pension credit for the party who will have State Pension credited to their account (the transferee), and a state scheme pension debit for the person whose additional State Pension is to be shared (the transferor). A state scheme pension debit becomes a weekly deduction from the transferor's State Pension when they reach State Pension age or, if later, the effective date of the pension-sharing order. State scheme pension credits give rise to a weekly State Pension for the transferee which becomes payable from the later of State Pension age or when the pension-sharing order takes effect. Where the share order takes effect before the start of the final tax year prior to State Pension age, the debit or credit, as applicable, needs to be revalued. For the old State Pension sections 45B and 55A of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 provide for revaluation by the percentage specified in the Revaluation Order for the tax year in which the share order takes effect.

3.9 From 6 April 2016, additional State Pension will still be shareable where either the transferor reached state pension age before 6 April 2016, or the divorce or dissolution proceedings began before that date. This means that equivalent provision to revalue the ensuing "old state scheme debit and credit" is therefore needed where the pension-sharing order takes effect in tax years starting on or after 6 April 2016. This provision is made by paragraph 2 of Schedules 8 (credits) and 10 (debits) of the Pensions Act (Northern Ireland) 2015. The percentage specified in this order for tax year 2016/17 will be the revaluing percentage for old state scheme debits and credits created in tax year 2016/17, and will apply where the transferor (in the case of the debit) or transferee (in the case of the credit) reaches State Pension age in tax year 2018/19.

Guaranteed Minimum Pension

3.10 For the purposes of GMPs (the pension paid in lieu of additional pension by an occupational pension which was contracted-out of SERPS) only earnings factors for the years 1978/9 to 1996/7 are relevant as the contracting-out arrangements changed from April 1997. GMPs are based on earnings factors on which primary Class 1 contributions were paid. Other than where an individual leaves a formerly contracted-out scheme before GMP pensionable age (60 for women, 65 for men), section 10 of the Pension Schemes (Northern Ireland) Act 1993 requires the earnings factors to also be revalued using the relevant order under section 130 of the 1992 Act.

4. Consultation

4.1 There is no requirement to consult on the proposals in this Order.

5. Equality Impact

5.1 In accordance with its duty under section 75 of the Northern Ireland Act 1998, the Department has conducted a screening exercise on the proposal and has concluded that it does not have any implications for equality of opportunity. The Order merely discharges the Department's duty to revalue earnings factors in line with the revaluation in Great Britain and does not alter policy.

6. Regulatory Impact

6.1 The Order does not require a Regulatory Impact Assessment as it does not impose a cost on business, charities, social enterprise or voluntary bodies.

7. Financial Implications

7.1 None.

8. Section 24 of the Northern Ireland Act 1998

8.1 The Department has considered section 24 of the Northern Ireland Act 1998 and is satisfied the Rule is not incompatible with any of the Convention rights, is not incompatible with Community law, does not discriminate against a person or class of person on the ground of religious belief or political opinion, and does not modify an enactment in breach of section 7 of the Northern Ireland Act 1998.

9. EU Implications

9.1 Not applicable.

10. Parity or Replicatory Measure

10.1 The corresponding Great Britain Order entitled the Social Security Revaluation of Earnings Factors Order 2017 (S.I. 2017/287) will come into force on 6 April 2017. Parity of timing and substance is an integral part of the maintenance of single systems of social security, child support and pensions provided for in section 87 of the Northern Ireland Act 1998. It was therefore necessary to make this Order during the interregnum.